

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

PHOENIX PROGRAMS OF NEW YORK, INC.
Employer¹

and

Case No. 29-RC-9217

DISTRICT 6, INTERNATIONAL UNION
OF INDUSTRIAL, SERVICE, TRANSPORT
AND HEALTH EMPLOYEES
Petitioner²

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before James Kearns and Amy Gladstone, Hearing Officers of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record³ in this proceeding, the undersigned finds:

1. The Hearing Officers' rulings made at the hearing are free from prejudicial

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as corrected at the hearing.

³ The undersigned Regional Director hereby approves the motion to amend the transcript which the Employer filed on April 27, 1999, and which is attached hereto as Appendix A. The undersigned further amends the transcript sua sponte as indicated in Appendix B attached hereto. References to the Employer's exhibits will hereinafter be abbreviated as "Er. Ex. #."

error and hereby are affirmed.

2. The parties stipulated that Phoenix Programs of New York, Inc., herein called the Employer, is a New York corporation with an office and place of business located at 34-25 Vernon Boulevard, Long Island City, New York, herein called the Employer's Vernon Boulevard facility,⁴ where it is engaged in operating drug rehabilitation and therapeutic programs. During the past 12 months, the Employer, in the course and conduct of its business operations, derived gross revenues in excess of \$250,000, and purchased and received at the Vernon Boulevard facility, goods and materials valued in excess of \$5,000, directly from suppliers located outside the State of New York. The parties also stipulated that the Employer is a health care institution within the meaning of Section 2(14) of the Act.

Based on the stipulation of the parties, and on the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and is a health care institution within the meaning of Section 2(14) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

⁴ Although the parties and witnesses referred to this facility as the "Long Island City facility," it will be referred to herein as the "Vernon Boulevard facility," in order to distinguish it from another facility on Northern Boulevard in Long Island City.

5. The Petitioner herein initially sought to represent all junior counselors, counselors, and senior counselors⁵ employed in the adult residential treatment program (also called the "primary" treatment program), located on the second, third and fourth floors of the Employer's Vernon Boulevard facility. At the hearing, the Employer made the following three contentions: (1) that the senior counselors are supervisors as defined in Section 2(11) of the Act and therefore must be excluded from the unit; (2) that the unit must include junior counselors and counselors from all 13 of the Employer's related drug-

⁵ During the hearing, the Petitioner amended its unit description to include "all *technical* employees ... including senior counselors, counselors and junior counselors" (emphasis added). Both the Employer and the Petitioner stated their belief on the record that these employees were "technical" employees, although they did not actually stipulate to their technical status, as that term has been defined by the Board. The record indicates that junior counselors and counselors are required to have a high school degree. (A bachelors' degree is "preferred" only for the senior counselors.) Many of the junior counselors are former addicts who came from the treatment program. In addition to this life experience, they receive 82 hours of training within their first year. Junior counselors' duties include assisting in group activities. At some point, they begin to handle their own caseload as counselors for the individual counseling of clients. One witness testified that the junior counselors and counselors are very closely supervised by the senior counselors; for example, counselors would never deviate from the planned activities of the day without first consulting a senior counselor. Although the counselors' written job description indicates that each counselor must be a "credentialed chemical dependency counselor," none of the witnesses mentioned any specific credentialing, licensing or certification process. Furthermore, the record does not contain detailed descriptions of how the clients' treatment plans are devised; to what extent, if any, the junior counselors and counselors work with doctors, nurses, social workers or other professionals; to what extent, if any, the junior counselors and counselors exercise independent judgment regarding the clients' treatment. Based on this record, it is not clear whether the petitioned-for employees herein are, in fact, technical employees. Compare Brattleboro Retreat, 310 NLRB 615 (1993)(chemical dependency counselors as technical employees) and Butler Hospital, 250 NLRB 1310 (1980)(mental health workers as technical employees) to SODAT, Inc., 218 NLRB 1327 (1975)(drug abuse counselors not technical), Milwaukee Sanitarium Foundation, Inc., 219 NLRB 1043 (1975)(alcoholism counselors not technical), and Charter House of St. Louis, Inc., 313 NLRB 951 (1994)(mental health technicians not technical). Thus, this Decision does not make any finding as to whether these employees are technical employees, does not use that term in the unit description, and does not rely on that status in making the unit determinations herein.

treatment facilities in the State of New York,⁶ not just the Vernon Boulevard facility; and (3) that, at the very least, the unit must also include junior counselors and counselors who work in the "induction" unit (described below) on the fifth floor of the Employer's Vernon Boulevard facility.

After considering the evidence submitted by the Employer at the hearing, the Petitioner conceded in a letter dated April 23, 1999, that the senior counselors are supervisors as defined in the Act. The record indicates, for example, that senior counselors' written evaluations of employees directly affect their employment status, including whether probationary employees should be retained and the level of employees' yearly wage increase. Based on the parties' positions and the record as a whole, I hereby find the senior counselors to be supervisors as defined in Section 2(11) of the Act and, as such, they will be excluded from the bargaining unit.

Thus, the unit now sought by the Petitioner would include approximately 14 junior counselors and counselors employed in the primary treatment program at the Vernon Boulevard facility. The two remaining issues for decision are the appropriateness of excluding the induction-unit employees, and the single-facility versus multi-facility issue. The Petitioner has indicated its willingness to proceed to an election in a broader unit including the induction-unit employees (which would total 21

⁶ Actually, as described in more detail below, there are at least three related corporate entities involved herein. Phoenix House Foundation, Inc. is the parent corporation, which operates drug-treatment programs in New York under the names of Phoenix Programs of New York, Inc. ("Phoenix Programs"), and Oxford Project, Inc. ("Oxford"). Employees at the petitioned-for Vernon Boulevard facility are employed by Phoenix Programs, whereas employees at some of the other facilities which the Employer seeks to include in a multi-facility unit are employed by Oxford. Although the parties did not expressly stipulate to any single-employer status, the Employer's attorney stated its position that, for purposes of this proceeding, Phoenix Programs and Oxford are "one in the same employer." Thus, in the context of discussing the possible multi-facility unit, generic references to the "Employer" herein should be understood to include both Phoenix Programs and Oxford.

employees) if found appropriate herein, but not in a multi-facility unit (totaling more than 100 employees).

In support of its positions on these issues, the Employer called the following five witnesses to testify: Phoenix House Foundation's vice president of human resources, Judy Secon; Phoenix Program's director of adult residential services, Harry Zerler; managing director of the Vernon Boulevard facility's "primary" treatment program, Loretta Hinton; and senior counselors John Corson and Maxima DeJesus.

The Employer's Operations

The record indicates that Phoenix House Foundation, Inc., is a not-for-profit corporation whose office is located on West 74th Street in Manhattan, New York. It is the parent corporation of various drug treatment corporations across the United States, including Phoenix Houses of California, Phoenix Houses of Texas and Phoenix Houses of Florida. In New York State, Phoenix House's subsidiaries consist of Phoenix Programs of New York, Inc., and Oxford Project, Inc., operating programs at the following 13 sites:

(1) An adult residential treatment center and induction center on Vernon Boulevard, Long Island City, NY;

(2) An adult residential treatment, vocational training, and the MICA program for mentally ill chemical abusers on Jay Street, Brooklyn, NY;

(3) An adult residential treatment center called "Belle Terre" in South Kortright, NY;

(4) An adult residential treatment center on West 74th Street in Manhattan, NY (located in the same building as Phoenix House Foundation's administrative offices, but on different floors);

(5) A corrections program on Prospect Place in Brooklyn, NY;

(6) A corrections program on Phelan Place in the Bronx, NY;

(7) A corrections program on East 185th Street in the Bronx, NY;

(8) Adolescent and adult residential treatment programs in Shrub Oak, NY, known as the "Yorktown" center ;

(9) Various adolescent ambulatory (i.e., outpatient or non-residential) programs, as well as diagnostic and referral services, on West 80th Street in Manhattan, NY;

(10) An "in-prison" program at the correctional facility in Marcy, NY;

(11) A criminal-justice ambulatory program called "Marcy II" on Northern Boulevard in Long Island City, NY

(12) A Court Outreach program, as well as diagnostic and referral services, on Flatbush Avenue in Brooklyn, NY, and

(13) The PORTAL Families Project on Rockaway Boulevard in Jamaica, NY.

It appears from the record that most of these programs operate under the name Phoenix Programs, but at least some of the corrections-related programs (including the Marcy prison program) operate under the name Oxford.⁷

The chief operating officer of both Phoenix Programs and Oxford is Kevin McEneaney. The following four officers report to McEneaney: David Calvert (senior director of the Jay Street facility); Matt Cassidy (director of community and ambulatory programs, including Court Outreach, PORTAL Families, MICA, diagnosis and referral services at West 80th and Flatbush sites); Peter Provet (vice president and director of adolescent services, including Yorktown and the adolescent programs at West 80th Street); and Jean Scott (vice president and director of adult services). In turn, there are three directors who report to Jean Scott: Nancy Giagnacova (director of corrections programs, including Prospect Place, Phelan Place, East 185th Street, Marcy and Marcy II); Harry Zerler (director of adult residential services, including both programs at the

⁷ One witness explained that Oxford was created as a separate corporation many years ago, for some unspecified reason having to do with its Federal Bureau of Prisons contracts. Even though Oxford no longer contracts with the Federal Bureau of Prisons, it has continued its separate identity for

Vernon Boulevard facility, and Belle Terre); and Ed Barnett (director of re-entry, supervising the adult residential program on the upper floors of the West 74th Street facility). Each program or facility generally has its own director or managing director. At the Vernon Boulevard facility involved herein, Loretta Hinton is the managing director of the primary residential treatment program (2nd through 4th floors), and Ed Greaux is director of the induction unit (5th floor). Both Hinton and Greaux report to Zerler.

Ten of these 13 facilities are located within New York City. Phoenix House Foundation's vice president of human resources, Judy Secon, testified that the Yorktown program is approximately one hour by car from her office on West 74th Street. The Belle Terre and Marcy facilities are, respectively, four hours and six hours from New York City.

There is no history of collective bargaining at any of these facilities.

The office on West 74th Street, Manhattan, is Phoenix House Foundation's headquarters, including its executive offices, human resources, administration, legal, finance, development office and other departments. Secon testified that she administers and supervises the human resource policies and practices for all of the Phoenix House Foundation subsidiaries in New York, California, Texas and Florida. Specifically, this includes the functions of payroll and benefits. All employees' time records and personnel records are stored in the human resources office at West 74th Street, although certain records (e.g., first aid or CPR license) must be kept at the facility where the employee works, for licensing purposes.

"bookkeeping" purposes. In all other respects, Phoenix Programs and Oxford are identical. For example,

Secon testified that there is a human resources policy manual, although it was not introduced into evidence. According to Secon, new policies are developed by a human resources policy development committee, with members representing each region and the central office. The committee meets approximately two or three times per year, in person or telephonically, to review and approve new policies. No specific examples were given. Secon testified that the policies are uniform for all of Phoenix House Foundation's subsidiaries.

Secon also testified that the employees of Phoenix Programs and Oxford in the 13 New York facilities have the same benefits, including vacation leave, holidays, sick leave, bereavement leave, military leave. They also have the same dress code, grievance procedure, and probationary period for new employees. However, the pay scales differ somewhat, depending on the funding source at particular programs. For example, employees who work in programs under contract with the Department of Corrections earn a higher rate.

When the facilities need to hire staff, the hiring process involves both the local facility and headquarters. Secon testified that all recruitment starts with the human resources office. If a facility director needs to fill a position, the local director notifies her. Her office then decides whether to run an advertisement, to recruit candidates via schools, or to use existing resumes on file. The human resources office usually runs an advertisement whenever counselors are needed for multiple facilities. Incumbent employees may also apply for open positions in other facilities, either as a lateral

Phoenix Programs and Oxford have the same boards of directors and corporate officers.

transfer or as a promotional transfer.⁸ The human resources office then reviews all the resumes and "distributes" them to the appropriate facility. Each local director then interviews the candidates at the local facility. Secon testified that, if the director wants to hire a candidate, his/her recommendation must "bubble up" through the hierarchy for approval. For example, the paperwork for a new employee at the Vernon Boulevard primary residential program would have to go through Hinton, Zerler, Scott, and then up to McEneaney. Ultimately, McEneaney must sign off on all "personnel action forms," for both Phoenix Programs and Oxford. If the local director is not interested in the candidate, the director may send the resume back to human resources, to consider routing the candidate to another facility. Secon was not aware of any hiring recommendations from a local director being reversed by the main office. No examples of such reversals were given by any of the witnesses.

Secon testified that recommendations to discharge employees can be initiated by senior counselors or directors at the local facilities, but that upper management must approve all discharges. Secon initially testified that on "a few occasions" the main office has told the local facility to get more information or to take other steps before an employee could be terminated. No specific examples were given. In response to a Hearing Officer's question, Secon estimated that upper management accepts the facilities' recommendation to discharge employees about 95% of the time.

The process for annual evaluations and wage increases also involve input from both the local facilities and the main office. Specifically, Secon testified that senior counselors first fill out evaluation forms for the counselors and junior counselors, and

⁸ See Er. Ex. 7, copy of a March 1999 job opportunity notice for New York and California.

assign them a rating. Secon takes all the evaluations, determines the total amount of money available for wage increases, calculates an amount of money available for each facility, and sets ranges for each rating (e.g., 4-5% for excellent, 2-3% for satisfactory, 1-2% for average). This information is then sent back to the local directors, who make the final determination within those ranges. Eventually, the merit increase approval forms must be signed by McEneaney.

When new employees are hired, they attend a common, one-day orientation program at the human resources office. During their first year, junior counselors and counselors for all facilities are required to attend 82 hours of training, which also takes place at a common site. Thereafter, the Employer continues to provide in-service training. Zerler testified that some in-service training takes place on a single-facility basis, but also that some training takes place at a common site at least three or four times per year. Hinton explained that the "basic duties" of the counseling staff are identical at all facilities, but added that differences between the client populations may require "minor variations" in duties. For example, the Oxford counselors have to modify the treatment to meet the needs of their clients referred via the criminal justice system.

The record indicates a total of 45 permanent transfers among all of the facilities in the past four fiscal years, for junior counselors, counselors, and admissions and outreach counselors.⁹ Secon explained that the Employer transferred some employees for its own "business reasons," as opposed to employees' desire for promotional transfers.

⁹ See Er. Ex. 5, a list of transfers for the 1995-96, 96-97, 97-98 and 98-99 fiscal years. Secon stated that the transfers in bold print were lateral transfers, whereas the others were promotional transfers.

For example, when a former program known as Taconic closed in 1996 for lack of funding, Jean Scott decided to transfer two Taconic employees to other facilities where there were vacancies (one to the induction unit, and one to Marcy II). Unlike hiring decisions, where the local directors' decisions are generally accepted, the transfer decisions are made by upper management alone. The local directors do not generally have the right to reject a transfer to their facility.

The Employer does not use a master seniority list for all the facilities. Employees who are laid off have no right to "bump" less-senior employees at other facilities.

Secon testified that temporary transfers between facilities are "very unusual." She did not recall examples of any temporary transfers between facilities.¹⁰ Loretta Hinton, who has been employed by Phoenix Programs for 27 years, recalled that four years ago, when the Belle Terre program first opened in South Kortright, New York, the Vernon Boulevard primary treatment unit had to "loan" staff to Belle Terre for about three or four months. Hinton did not know of any other temporary transfers or re-assignments. Witness John Corson, who has been employed by Phoenix Programs for a total of nine years and who currently works as a senior counselor at Phelan Place, recalled a few temporary transfers in early 1999. Specifically, Phelan Place sent two counselors to Prospect Place for 3 days, to help set up a new program there; and Phelan Place sent some counselors and senior counselors to East 185th Street because of under-

¹⁰ This paragraph describes only transfers between facilities, i.e. in different physical locations. Temporary transfers or re-assignments between the primary unit and induction unit at Vernon Boulevard -- i.e., within the same building -- are discussed separately below.

staffing and other problems there. The Employer does not use any "floating" employees who work at more than one facility on a day-to-day basis.

The counseling staffs from all the facilities in New York State attend a common Christmas party, "field day," and special celebrations such as Phoenix House's 30th anniversary.

Induction center employees

As noted above, the Vernon Boulevard facility contains two treatment programs. The induction program, located on the fifth floor, is directed by Ed Greaux. It employs 2 senior counselors, and 7 junior counselors and counselors. The primary treatment program is located on the second through fourth floors. Working at the primary treatment program under managing director Loretta Hinton are: 2 directors (Caesar Sosa and Jose Rosario), 7 senior counselors; and 14 junior counselors and counselors. Both Greaux and Hinton report to Harry Zerler. The Vernon Boulevard building has common areas on the first floor, including a dining room/cafeteria, meeting rooms, clinical offices and administrative offices, which both programs use.

The induction unit is where all of the Employer's adults clients live during their first 30 to 90 days of treatment. Zerler described the program as the first stage in a "long continuum of care." During that time, counselors evaluate the client, devise a preliminary treatment plan, and begin to provide treatment. The clients generally become indoctrinated into the Employer's "therapeutic community" philosophy, and may also receive medical services at this time. After this induction phase, clients are transferred to one of the adult primary residential treatment programs (at Vernon Boulevard, Jay Street, Belle Terre or Yorktown), usually for 12 to 18 months. The last

stage of treatment is the "re-entry" program, when clients receive vocational training and preparation to live independently.

Zerler testified that the treatment plan which the induction program develops for each client must be implemented by the primary treatment program where the client is later transferred. Zerler explained that the treatment plan is communicated primarily via the case record and other written communications, but that telephonic communications between the facilities may also occur to address special concerns or questions. In response to a somewhat leading question of whether these telephonic communications were "rare" or "frequent," Zerler said they were frequent. He did not give any specific estimates of how often they occur.

Junior counselors and counselors employed by the induction program have the same qualifications, training and duties as those in the primary treatment program. They have the same pay ranges, since those programs are funded by the same source. However, the two programs have separate supervision and direction for some labor-related matters. For example, Hinton and Greaux each receive a separate sum of money to distribute for employees' annual wage increases. Each program generally has its own hiring, scheduling and assignment of employees, and each program holds its own separate staff meetings at the beginning of each shift.

Zerler testified generally that junior counselors and counselors from the two programs sometimes substitute for each other, for example, if one program is short-staffed due to illness or bad weather. Zerler explained that, in theory, these substitutions could happen in either direction (i.e., primary to induction, or induction to primary), since the counseling duties at both programs are substantially identical. However,

Zerler added that, in reality, the primary treatment staff is more likely to substitute for the induction staff because the primary treatment staff is larger. Zerler did not give any specific examples of these temporary transfers, and did not know how often they occur. Hinton corroborated that her primary treatment staff sometimes fills in when the induction staff has a shortage. For example, she recalled that a junior counselor named Gerald Sally worked "upstairs" (i.e., at the fifth-floor induction program) for a portion of the day in early 1999. Hinton also testified about two permanent transfers between the two programs at Vernon Boulevard: senior counselor Michael Muniz and junior counselor Patricia Barnes both transferred from the primary treatment unit to the induction unit.¹¹

The record contains the following evidence of contact between the two programs at the Vernon Boulevard facility. As mentioned above, they sometimes attend common training sessions. Zerler also testified that there are occasions when all the residents and counselors in the building come together as a "unified community," when there are "issues that involve everyone." More specifically, Hinton stated that both programs meet together to discuss special problems such as drug use in the facility, or the death of a client. On some occasions, although admittedly "not that often," Hinton said the two staffs come together for the induction residents to make a "motivational" presentation to the primary residents, as part of their morning meeting. Senior counselor Maxima DeJesus, who works in the primary treatment program, also testified that she comes in contact with induction staff when induction needs one of the primary residents to escort an induction resident to court or to a medical appointment. Finally, both Hinton and

¹¹ For some reason, these two transfers do not appear on the Employer's lists of transfers (Er.

DeJesus testified that the two staffs see each other in the common areas (dining hall, elevators, etc.) every day, and that they know each other's names.

As stated above, the Petitioner seeks to represent a unit of junior counselors and counselors employed in the primary treatment program on the second through fourth floors of the Employer's Vernon Boulevard facility, but not the junior counselors and counselors in the fifth-floor induction program.

It is well established that a certifiable bargaining unit need only be *an* appropriate unit, not the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enfd* 190 F.2d 576 (7th Cir. 1951); Omni-Dunfey Hotels, Inc., d/b/a Omni International Hotel of Detroit, 283 NLRB 475 (1987); P.J. Dick Contracting, 290 NLRB 150 (1988); Dezcon, Inc., 295 NLRB 109 (1989). In assessing the appropriateness of any proposed unit, the Board considers such community-of-interest factors as employee skills and functions, degree of functional integration, interchangeability and contact among employees, and whether the employees have common supervision, work sites, and other working terms and conditions. Some classifications may share such a close community of interest with the petitioned-for classifications that it would be inappropriate to exclude them. Overnite Transportation Co., 322 NLRB 723 (1996).

In the instant case, I find that the induction employees share a sufficiently close community of interest with the petitioned-for employees that it would be inappropriate to exclude them from the bargaining unit. The record indicates that they work in the same building, and have daily contact with each other in the first-floor common areas and elsewhere. Counseling employees in one program have the same qualifications,

Exhibits 5 and 6).

skills and training as counseling employees in the other program, and perform essentially the same basic counseling functions. Their similarity and interchangeability is underlined by the fact that primary treatment counselors substitute for induction counselors on occasions when the induction program is short-staffed. The two groups also attend common training sessions, and some common meetings in the building. The two groups assist each other, for example, by arranging for primary treatment residents to escort induction residents for appointments outside the building. Finally, the two groups have the same pay ranges and benefits, although their specific annual pay increases are determined separately by each program's separate supervision.

Under these circumstances, I agree with the Employer's contention that any appropriate unit must include the counseling employees from both programs at the Vernon Boulevard site. To allow the Petitioner to "pluck" classifications from certain floors of the building, while excluding the same classifications on another floor of the building, would probably allow the extent of Petitioner's organization to control, in violation of Section 9(c)(5) of the Act, and would also cause an unwarranted proliferation of units in this health care setting. Bearing these principles in mind, as well as the close community of interest between the two groups, I conclude that it would be inappropriate to exclude the induction counselors and junior counselors from the bargaining unit.

Single-facility versus multiple-facility issue

As discussed above, a certifiable bargaining unit need only be *an* appropriate unit, not the most appropriate unit. P.J. Dick Contracting, *supra*. Whenever a labor organization seeks to represent employees at a single location of a multi-location

employer, the Board generally presumes the single-location unit to be appropriate, even though a broader unit might also be appropriate. A multi-location employer asserting that the single-location unit is *inappropriate* must rebut the presumption, for example, by showing that the single plant is so integrated with the other plants as to lose its separate identity. Kendall Co., 184 NLRB 847 (1970). The relevant factors include geographical distance between the facilities; the extent of interchange and contact among employees at the different facilities; their functional integration; the extent of centralization in management and supervision, especially with regard to labor relations (hiring, firing, affecting the terms of employment); and the history of collective bargaining. The Board has also extended this single-facility presumption to the health care industry. Manor Healthcare Corp., 285 NLRB 224 (1987); O'Brien Memorial, Inc., 308 NLRB 553 (1992); Visiting Nurse Association of Central Illinois, 324 NLRB 55 (1997). In the health care context, an employer may rebut the presumption by showing that, as a result of the above factors, a single-facility unit would threaten the kinds of disruptions to patient-care continuity that Congress sought to avoid. Manor Healthcare, supra, 285 NLRB at 225. The United States Court of Appeals for the Second Circuit has acknowledged the single-facility presumption to be "beyond dispute." Staten Island University Hospital v. NLRB, 24 F.3d 450, 146 LRRM 2385, 2390 (2nd Cir. 1994).

In the instant case, I find that a bargaining unit limited to the Vernon Boulevard facility is an appropriate unit, and that the single-facility presumption has not been rebutted. For the most part, the junior counselors and counselors at the Vernon Boulevard facility work as a distinct group, assisting the clients who reside at that particular facility. Their work does not appear to entail any significant contact or

interchange with other facilities. The record contained only a few isolated examples of temporary transfers between the Employer's 13 facilities over the past four years, such as to help set up a new program.¹² Notably, although the Vernon Boulevard facility was described as only "10 minutes away" from the other Long Island City facility (on Northern Boulevard), there was no specific evidence of contact or interchange between these two facilities. Some other facilities in the multi-facility unit urged by the Employer are four to six hours away from the Vernon Boulevard facility.

Furthermore, the programs at Vernon Boulevard have their own directors. The record indicates that the local directors have a fair amount of autonomy in making decisions in the area of labor relations. For example, although the initial pool of applicants for new hiring comes from the human resources office, the local directors conduct their own interviews on site, and essentially decide whom they want to hire. There is no evidence that the upper management has ever reversed a local director's hiring decision, although the paperwork must be approved and signed at higher levels. Similarly, as for discharging employees, Secon testified that local directors' recommendations are accepted at least 95% of the time. No specific examples were given of upper management exercising control over discharge decisions at the facilities. As for wage increases, although the human resources office sets the total amount of money available and the range of percentages, the *local* director sets the final amount for each employee, based in part on the rating given by the *local* senior counselors. It should also be noted that wage rates are not uniform throughout the multiple facilities,

¹² The Board places less weight on permanent transfers, as compared to temporary transfers, when making unit determinations. General Mills Restaurants, Inc., d/b/a Red Lobster, 300 NLRB 908, 911 (1990); Passavant Retirement and Health Care Center, Inc., 313 NLRB 1216, 1218 n.2 (1994).

since certain corrections-related contracts allow for higher pay. There is no evidence that the central office controls the day-today scheduling and assignment of employees at the local facilities.

Admittedly, the Employer has introduced evidence to show some commonality among employees at the multiple facilities, such as common benefits and policies, centralized administration and record-keeping at the human resources office, a common posting of vacancies which allows for permanent transfers between facilities, and some common training. However, this evidence is insufficient to show that the Vernon Boulevard facility is so integrated with the other facilities as to lose its separate identity. O'Brien Memorial, *supra*. Furthermore, the Employer has no history of collective bargaining on a multi-facility basis. Finally, given the lack of interchange among facilities, there is no evidence that a single-facility unit limited to Vernon Boulevard would increase the chances of disruptions to patient care.

The multi-facility-unit cases cited by the Employer are distinguishable. For example, in West Jersey Health System, 293 NLRB 749 (1989), the degree of employee interchange among the employer's four facilities was much more substantial than here, e.g., 147 permanent transfers of employees and supervisors, and the regular rotation of 250 other employees among facilities in a 14-month period. In addition, employees could bump other employees at other divisions based on seniority. Unit employees were regularly supervised by managers with systemwide responsibilities. Finally, in that case, patient-care support services were sufficiently integrated among the facilities that patient care would be adversely affected if single-location units were deemed appropriate. None of these factors is present in the instant case.

In short, based on the foregoing, I find that the Employer has failed to rebut the presumptive appropriateness of a single-facility bargaining unit, limited to the Vernon Boulevard facility. Accordingly, I hereby find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time junior counselors and counselors employed by Phoenix Programs of New York, Inc.,¹³ at its 34-25 Vernon Boulevard, Long Island City, New York facility, but excluding all other employees, clerical employees, guards, senior counselors and other supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those

¹³ Because I have found the single-facility unit to be appropriate, I need not address Phoenix Programs' exact status vis-à-vis Oxford Project, Inc., the employer at some other facilities.

eligible shall vote whether they desire to be represented for collective bargaining purposes by District 6, International Union of Industrial, Service, Transport and Health Employees.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before May 14, 1999. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to the commencement of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by May 21, 1999.

Dated at Brooklyn, New York, this 7th day of May, 1999.

/s/ Alvin Blyer

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201

440-1720-0133
440-3325
470-8567

APPENDIX B

The transcript is hereby further amended as follows:

Page 6, line 20: "214" should read "2(14)".

Page 27, line 18: "3425" Vernon Street should read "34-25".

Page 34, line 1: "Counsel" should read "Council".

Page 57, line 12: "county-wide" should read "country-wide".

Page 97, line 5: "site" should read "side".

Page 97, line 25: "not" should read "now".

Page 102, line 3: "Konick" should read "Taconic".

Page 193, line 3 et seq.: All references to Ed "Grove" or "Grow" should read "Greaux".

Page 197, line 9: ""terminate" should read "treatment".

Page 208, line 25: "renewable" should read "reviewable".

Page 215, line 17: "211" should read "2(11)".

Page 277, line 20: BY MR WALTERS, rather than MR. GIBBONS.

Page 287, line 20: "Ergo" should read "Ed Greaux".